

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 266 OF 2005.

1. Mrs. Alda Valezia Tereza Mergulhao e Lobo, daughter of the late Francisco Antonio Alexandro do Rosario Mergulhao, major in age, widow, residing at Navelim, Salcete, Goa; and

2. Mrs. Maura Dulce Joseph Meregulhao e Crasto also known as Maura Mergulhao, daughter of the late Francisco Antonio Alexandre do Rosario Mergulhao, major in age, widow, residing at Navelim, Salcete, Goa.

.... Petitioners.

Versus

1. Mr. Joaquim Jeronimo de Almeida, son of late Melquiades Conceicao Baptista de Lino Almeida, aged 51 years, married, service; and his wife

2. Mrs. Irene Isabel Rodrigues e Almeida, aged 44 years, housewife; both residing at House No.6 (Old), No.236 (New) Laxette, Varca, Salcete, Goa.

3. Mr. Jose Sergio de Ramalho Almeida, son of the late Melquiades Conceicao Baptista de Lino Almeida, aged 46 years, service, residing at House No.259, D'Mello Vaddo, Carmona, Salcete, Goa.

4. Mrs. Anina Bonifacio Fremiota

Antonio Mergulhao Hari Kapur,
daughter of the late Francisco
Antonio Alexandre do Rosario
Meregulhao, major in age,
married, and her husband:

5. Mr. Hari Kapur,
major in age; both
residing at Navelim, Salcete, Goa. Respondents.

Shri F. M. Reis, Advocate for the Petitioners.

Shri J. Godinho, Advocate for the Respondents No.1 , 2 and 3.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 27th JANUARY, 2006.

ORAL JUDGMENT:

Heard. Rule. By consent Rule is made returnable forthwith.

2. The petitioners challenge the Order dated 16.02.2005 passed in Regular Civil Suit No.282/2003/F of the Addl. Civil Judge S.D., Margao. By the impugned order the learned Civil Judge has allowed the application filed by the respondents for rejection of the written statement filed by the petitioners who are the defendants No.2 to 5 in the said suit. The written statement is sought to be rejected for having been filed beyond 24 days after the expiry of 90 days from the date of service of summons for filing the written statement.

3. While assailing the impugned order, the learned Advocate for the petitioners has submitted that the delay in filing the written statement was not intentional besides that it was on account of failure on the part of the respondents/plaintiffs to furnish copies of the documents sought to be relied upon by the respondents as also on account of fixing of specific date for filing the written statement beyond the period 90 days. In that regard reliance is also placed in the decision of the Apex Court in the matter of *Shaikh Salim Haji Abdul Khayumsab v. Kumar & Ors. reported in 2006 A.I.R. Bom. R. 381.*

4. On the other hand, the learned Advocate for the respondents submitted that in terms of Order 7, Rule 14 of C.P.C. though the plaintiff is required to file copies of the documents in Court, there was no obligation cast upon the plaintiff to furnish copies thereof to the defendants. Being so, mere delay on the part of the plaintiff in furnishing the copies of the documents could not be justification for delay in filing the written statement when statutory provision as regards the period of limitation prescribed for filing written statement is 90 days from the date of service of the summons, and the petitioners had admittedly failed to file the same, within the said period, and therefore no fault can be found with the impugned order.

5. In the case in hand, there was a delay of 24 days in filing the written statement. The summons for filing the written statement was served on the petitioners on 17.12.03. The written statement was required to be filed on 17.1.04. On the said day the petitioners moved the trial Court for direction to the respondents/plaintiffs for supply of copies of the documents which were sought to be relied upon by the plaintiff. Accordingly, direction was issued to the plaintiff to furnish the copies of those documents. Thereupon the matter was adjourned to 17th February, 2004 for filing of the written statement. Till then the copies of the documents were not furnished by the respondents to the petitioners. The said fact was brought to the notice of the trial Court and the trial Court again directed the plaintiff to furnish the documents. Accordingly copies were furnished and the matter was adjourned to 18th March, 2004. However, on 18th March, 2004 the petitioners sought adjournment and sought for more time to file written statement and accordingly the matter was adjourned and was fixed for filing written statement on 6th April, 2004. The written statement was, in fact, filed on 6th April, 2004. However, thereafter, the respondents filed the application contending that the written statement was filed beyond the period of 90 days and, therefore, in terms of Order 8 rule 1 C.P.C., the same was required to be rejected. All these facts are not in dispute.

6. Undoubtedly in terms of Order VIII, rule 1 of C.P.C., the written statement has to be filed within 30 days from the date of service of summons. Of course, he can thereafter be allowed to file the written statement for the reasons to be recorded by the Court, provided that the maximum period within which the written statement could be filed should not exceed the period of ninety days from the date of service of summons.

7. Order 7 rule 14(1) of C.P.C. provides that where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. Referring to this provision of law and drawing attention to Order 39, rule 3, it was sought to be contended on behalf of the respondents that only in cases where an application for temporary injunction is granted ex-parte, the question of furnishing documents relied upon by the plaintiff to the defendant would arise and not otherwise. The contention cannot be accepted in view of specific amendment to Rule 2 of Order 5 for the State of Maharashtra and Goa. Rule 2 thereof clearly provides that every summon shall be accompanied by a copy of the plaint with annexures, or if so permitted, by concise statement. Consequently the

summons issued in relation to a plaint, has also to accompany all the copies of documents relied upon by the plaintiff and filed in the court along with the plaint. Otherwise, the obligation of the plaintiff to furnish copies of the documents along with the plaint as provided under Order 7, rule 14 would be redundant. The copies of documents are necessarily required to be filed in order to annex them to the copy of the plaint which has to accompany the summons to be served upon the defendant. Merely because O.39 rule 3 of C.P.C. provides that copies of documents relied by the plaintiff are required to be served upon the defendant when ex parte injunction is granted, that itself will not absolve the plaintiff from his obligation to furnish copies of the documents to be served upon the defendant along with the summons.

8. In the case in hand, the copies of the documents were furnished to the petitioners as late as on 17th February, 2004 or sometime thereafter, but prior to 18th March, 2004. Undisputedly within 90 days therefrom, the written statement was filed. Besides, there was a specific date fixed for filing written statement and it was 6th April, 2004. Undisputedly the written statement was filed on 6th April, 2004. Considering the same and bearing in mind the ruling of the Supreme Court in **Shaikh Salim Haji** (Supra) the petitioners are justified in contending that the trial Court failed to exercise its jurisdiction as was

required to be exercised in relation to the written statement filed by the petitioners and, therefore, the impugned order cannot be sustained and is liable to be set aside and is accordingly hereby set aside. Exhibit 18 filed by the respondents is hereby dismissed. The written statement filed by the petitioners on 6th April, 2004 is directed to be taken on record and the suit to proceed in accordance with the provisions of law.

8. Rule is made absolute in above terms with no order as to costs.

R.M.S.KHANDEPARKAR, J.

sl.